



OVERVIEW OF LAWS AND POLICIES FOR CRITICAL AREAS PROTECTION IN KING COUNTY

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King County covers more than 2,100 square miles in a geographically diverse setting. It extends from Puget Sound to the Cascade Mountains. Its four major watersheds contain a variety of landforms, including marine shorelines, river floodplains, lakes and streams, plateaus, slopes and mountains. Fish and wildlife habitat is found throughout these watersheds. The majority of the County's population – more than 1.6 million in 2000 – lives within 39 incorporated cities. The King County unincorporated area is home to 360,000 people and includes working farms and forests, residential communities, public facilities and businesses. The unincorporated area also contains the majority of the County's remaining high quality natural resources. Protecting and restoring these natural resources is among King County's primary goals.

State and federal laws also require King County to protect natural resources and manage urban growth. The following discussion summarizes key state and federal legal requirements, King County's Comprehensive Plan, and the County's proposed Critical Areas Ordinance.

Growth Management, Critical Areas and Best Available Science

The Growth Management Act (GMA) requires larger cities and counties in Washington State to adopt comprehensive plans and development regulations to implement those plans. GMA requires the comprehensive planning process to consider a variety of goals. These include encouraging growth to take place within urban areas, encouraging the provision of affordable housing, protecting the environment, and fostering natural resource industries such as agriculture, forestry, and mining. The GMA recognizes that local governments must balance these requirements.

The GMA requires local governments to designate and protect critical areas, including:

- Wetlands;
- Critical Aquifer Recharge Areas;
- Fish And Wildlife Habitat Conservation Areas;
- Frequently Flooded Areas; and
- Geologically Hazardous Areas

In 1995, the GMA was amended to require local governments “to include the best available science when developing policies and development regulations to protect the functions and values of critical areas”, giving special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. Counties and cities are required to review their comprehensive plans and development regulations on a regular schedule to determine whether they continue to meet the requirements of the GMA. King County must complete its review of best available science and make any necessary code changes by December 2004.

The requirement to include best available science in critical area policies and regulations has significant implications for both King County and its citizens. In the past, there was little state guidance for designating and protecting critical areas. The recent changes in state law direct the County to document the best available science considered, explain its rationale for departing from science-based recommendations, and identify potential risks to the functions and values of the critical areas if the County does depart from science based recommendations.

Endangered Species Act

Chinook salmon and bull trout were listed as threatened species under the Endangered Species Act (ESA) in May 1999 and December 1999, respectively. Coho salmon, Lake Sammamish kokanee, steelhead, and sea-run cutthroat trout have come under scrutiny for potential listing under the ESA. The federal agencies responsible for the listings have adopted rules that prohibit the take of these species¹. This prohibition applies to individuals, businesses, and local governments, such as King County.

King County participated in the Tri-County Salmon Conservation Coalition to develop a regional response to the ESA listings. The *Tri-County Model 4(d) Rule Response Proposal*, released by Tri-County in May 2000, provides guidance that local governments may use in their development of Critical Areas Ordinances². King County has referred to the Tri-County Model as it developed draft critical area regulations. The proposed ordinance has been developed to protect habitat in conformance with the GMA, in lieu of seeking a take limit under the federal 4(d) rule for chinook salmon. Protection requirements for streams and wetlands will help protect chinook salmon and bull trout habitat, reducing the danger that those engaging in development activities will cause harm to listed species in violation of the ESA.

Clean Water Act

The broad objective of the Clean Water Act (CWA) includes the restoration and maintenance of the chemical, physical, and biological integrity of lakes, wetlands, streams and rivers, and marine waters, such as Puget Sound. CWA employs numerous strategies to this end, among them is the National Pollutant Discharge Elimination System (NPDES) permitting program. King County is required to obtain NPDES permits for discharges to the water resources listed above. The permitting program regulates a variety of point sources, which include wastewater treatment plants and industries, construction sites, and municipal stormwater facilities, such as roadside ditches and storm sewers.

The CWA mandates that municipal stormwater permits require controls, also known as best management practices, to reduce the discharge of pollutants to the maximum extent practicable. Included in King County's municipal permits are requirements that the County control runoff from new development, redevelopment, and construction sites and treat and control the addition of pollutants to runoff. King County has developed a Stormwater Management Program that guides the County's compliance with its permit requirements. King County's proposed Critical Areas Ordinance, including buffers to protect critical areas, is one of the permit requirements. Buffers help reduce the volume of pollutants, including sediment, that reaches streams and wetlands in runoff from development, redevelopment, and construction sites.

King County Comprehensive Plan

King County comprehensive planning dates back to 1964. The County's first comprehensive plan under the GMA was adopted in 1994, and the first major update was adopted in 2001. The King County Countywide Planning Policies set the framework for comprehensive planning throughout the County.

Among the countywide planning goals is direction to coordinate the protection of critical areas across jurisdictions. King County's 2000 Comprehensive Plan implements these goals in Chapter 4 on the Environment. The Comprehensive Plan directs that "environmental quality and important ecological functions shall be protected and hazards to health and property shall be minimized through development reviews and implementation of land use plans...." The Plan also encourages the use of "incentives to protect and restore the natural environment whenever practicable."

The 2000 Comprehensive Plan addresses species listed as endangered or threatened under the ESA. Besides directing the County to continue participating in the Tri-County Salmon Conservation Coalition, the

¹ Take is defined as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct" in the ESA.

² The *Tri-County Model 4(d) Rule Response Proposal*, developed by the Tri-County Salmon Conservation Coalition, includes six programs to guide local governments in protecting chinook salmon and bull trout habitat.

Comprehensive Plan states the County's intention to update regulatory and incentive programs to improve their contribution to the conservation and recovery of listed species.

Proposed Critical Areas Ordinance

It has been more than 10 years since King County's Sensitive Areas Ordinance (K.C.C. 21A.24) was adopted by the King County Council. In addition to the new state and federal regulatory direction discussed above, our understanding of ecological systems has advanced significantly. To comply with the requirements of the GMA and update King County's critical area regulations, the King County Executive is considering changes to the King County Code. The proposed changes address the following critical areas³:

- Wetlands
- Fish And Wildlife Habitat Conservation Areas (including Aquatic Areas)
- Frequently Flooded Areas and Channel Migration Zones
- Geologically Hazardous Areas

Resources

Public review drafts of the Critical Areas Ordinance and Stormwater Ordinance: <http://www.metrokc.gov/ddes/cao>

Washington Growth Management Act and Best Available Science guidance: <http://www.oed.wa.gov/info/lgd/growth/law>

King County Comprehensive Plan (2000): <http://www.metrokc.gov/ddes/compplan>

Endangered Species Act Listing Documents and Rules: www.nwr.noaa.gov and www.fws.gov.

Conserving Salmon: King County Accomplishments and Action Plan (2002): <http://www.metrokc.gov/exec/esa>

Tri-County Model 4(d) Rule Response Proposal (2001) and Biological Review (2002): www.salmoninfo.org

³ Protections for Critical Aquifer Recharge Areas will be updated in a separate ordinance in 2003.